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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 97-81
Regarding Multiple Address Systems)

REPLY COMMENTS

The Burlington Northern and Santa Fe Railway Company ("BNSF") and Norfolk Southern Corporation ("NS"), by their attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby jointly submit reply comments in the captioned proceeding.^{1/} For their joint reply comments, BNSF and NS state as follows:

The 928/952/956 MHz Band Should Be
Allocated for Exclusively Private Use

The initial comments in this proceeding clearly, overwhelmingly and compellingly demonstrate that the Nation's infrastructure industries need access to the 928/952/956 MHz band on a private, internal basis in order to assist in the provision of the telecommunications support necessary to meet critical safety, environmental and operational requirements.^{2/}

Virtually every industry commentator cited specific and legitimate current and projected internal requirements for that

^{1/} The instant rulemaking proceeding was initiated by the Commission's Notice of Proposed Rule Making, WT Docket No. 97-81, FCC 97-58 (released February 27, 1997) (hereinafter "NPRM").

^{2/} See, generally, the initial comments of the Affiliated American Railroads ("Affiliated"), American Water Works Association, Cooperative Power Association, American Petroleum Institute, Personal Communications Industry Association and UTC.

25

MAS capacity, at a minimum. And, as pointed out in the comments, those requirements are not only operationally driven, but also are imposed on industry by the governmental regulation of the national infrastructure.^{3/} In addition, the comments of the frequency coordinators and equipment suppliers present particularly compelling observations in support of their unanimous belief that the 928/952/956 MHz band must be allocated for exclusively private use.^{4/}

There has been nothing submitted in the record of this proceeding which would warrant the Commission abandoning its proposal to allocate the 928/952/956 MHz band for private use. By contrast, there has been overwhelming evidence presented in the comments of the railroads, the utilities (publicly-operated, privately-owned and cooperative) and the petroleum industry, all critical parts of the Nation's infrastructure, that support the validity of the Commission's proposal for the 928/952/956 MHz band.^{5/} BNSF and NS urge the Commission to heed the evidence,

^{3/} In its comments, Colorado Interstate Gas Company ("Colorado"), notes that the Federal Energy Regulatory Commission imposes strict safety and environmental requirements on the energy industry. It should be noted that BNSF, NS and other railroads are subject to similar requirements imposed by the Federal Railroad Administration. The comments of Alligator Communications, Inc. ("Alligator") also cite governmental regulation as a significant factor in the telecommunications requirements of industry.

^{4/} Alligator, Black & Associates, Comsearch, Itron, Inc., Microwave Data Systems and Sensus Technologies, Inc.

^{5/} See, generally, the initial comments of BNSF and NS, Affiliated, Colorado, Delmarva Power and Light Company, GPM Gas Corporation ("GPM"), East Bay Municipal Utility District, Public Service Company of New Mexico, Puget Sound Energy, Inc., Southern

and the Commission's own initial instincts, and adopt an allocation plan which includes the reservation of the 928/952/956 MHz band for exclusively private use.

The Commission Must Specify
What Constitutes "Private" Use

Any reading of the initial comments in this proceeding makes apparent the need for clear and specific criteria for allowable uses of those MAS channels allocated to "private" use. Even some present MAS licensees admit to confusion and concern as to whether their uses of MAS channels are of a sufficiently private nature to make them eligible to utilize spectrum allocated for exclusively private use.^{6/} BNSF and NS submit that the distinction between a "subscriber-based service" and a "private user" falls somewhere between Radscan (which indicates it "has been adding nearly 2,000 subscriber remote units every month"),^{7/} and AirTouch/Arch (who assert that their use of MAS

California Edison Company, Washington Suburban Sanitary Commission, and Wells Rural Electric Company.

^{6/} The best example of this concern is reflected in the comments of Radscan, Inc. ("Radscan"), where it is admitted that:

If the Commission determines that Radscan's service is not subscriber-based, then many of Radscan's concerns in this proceeding are alleviated.

(Radscan, at fn. 11).

To a lesser extent, other commentators indicate concerns that some of their utilization of MAS capacity may be considered to be other than "private, internal" uses, and thereby compromise the otherwise private character of their MAS use. See, comments of AirTouch Paging and Arch Communications Group ("Airtouch/Arch"), GPM, and ProNet, Inc.

^{7/} Radscan, at p. 2 (emphasis added).

channels to "control paging facilities at multiple locations," is not "a commercial subscriber usage, but rather is an intermediate link usage akin to an internal system of communication")^{8/} or GPM (which utilizes "less than one percent of its total MAS frequency use" to gather information it then processes and sells to certain of its gas producing customers).^{9/} Where the Commission draws the line of demarcation between subscriber-based commercial use and private use will be critical to assuring the availability of RF capacity for the present and projected telecommunications needs of those infrastructure industries which rely on private, internal systems to meet critical safety, environmental and operational requirements. Accordingly, BNSF and NS urge the Commission to adopt clear and stringent criteria for the use of those MAS channels it allocates for private use.^{10/}

Site-by Site Licensing

The commenting industrial users indicate that typical private MAS licensees seek and utilize MAS facilities only at those discreet sites where they have an established operational presence, as is appropriate for a point-to-multi-point service, and as was anticipated by the Commission when it allocated

^{8/} Airtouch/Arch, at p. 3.

^{9/} GPM, at pp. 2 and 7.

^{10/} Although spectrum efficiency considerations may dictate that private MAS licensees be allowed to make any excess capacity available to other private users, the Commission should make clear that any disposition of excess capacity cannot be made on a for-profit basis, but, instead, should be limited to making any excess capacity available only to other private, internal users on a cost-sharing basis.

spectrum for MAS. Industry's position in this regard is fully and unanimously supported by the comments of the frequency coordinators and equipment suppliers. All commentators urging site-by-site licensing assert and demonstrate that site-by-site licensing is the most spectrum efficient mechanism for assigning spectrum allocated for exclusively private use.

Further, most commentators agree that a geographic licensing scheme is useful only where the spectrum to be assigned is intended for commercial, subscriber-based service. In this regard, it is interesting to note that the only commentators stating a preference for geographic licensing of MAS spectrum are those with an apparent intent to use MAS spectrum for the provision of subscriber-based services.^{11/}

As spectrum allocated for exclusively private use should not be subjected to licensing through auction, and as site-by-site licensing promotes spectrum efficiency in private services, BNSF and NS again urge the Commission to retain its site-by-site licensing mechanism for all MAS spectrum allocated for exclusively private use.

Treatment of Incumbents - Grandfathering

The NPRM proposed that the licenses of subscriber-based systems presently utilizing the 928/952/956 MHz band channels be "grandfathered", even after such channels are allocated for exclusively private use. Unfortunately, Radscan is now

^{11/} See, comments of CellNet Data Systems Inc., Radscan and Rural Telecommunications Group.

attempting to convert the proposed grandfathering shield into a sword by which it would acquire unlimited and exclusive rights to expand the coverage of its unquestionably subscriber-based service.^{12/} In its comments, Radscan asks that its existing "uses" of a frequency, not just its existing "licenses", be grandfathered. In other words, Radscan seeks the ability to acquire additional coverage area at will; something it could not do under current site-by-site licensing procedures, much less under the allocation plan and licensing mechanisms proposed in the NPRM. Radscan is not seeking equity; Radscan is seeking unfair advantage. It asks that its non-conforming use of the 928/952/956 MHz band be given an absolute priority over the needs and requirements of qualified private, internal users. As demonstrated above, there are overwhelming and compelling reasons to allocate the 928/952/956 MHz band for exclusively private use, and there are equally compelling reasons supporting site-by-site licensing as the only licensing mechanism appropriate for assignment of private spectrum. While the Commission may find it fair or equitable to grandfather Radscan's existing site-by-site licenses, there can be no justification for allowing Radscan to aggrandize additional spectrum for which it is not otherwise qualified. The demonstrated needs of the infrastructure industries for private, internal telecommunications capacity should not be usurped by Radscan's dreams for a commercial, subscriber-based spectrum empire.


^{12/} Radscan, at pp. 15-18.

No Mobile Service on Private Channels

The Commission should not allow any MAS spectrum allocated for private use to be utilized to provide mobile service. On this point, the Commission would do well to heed the unanimous comments of the frequency coordinators, which are summed-up in Black's warning that "[m]ixing point-to-multi-point, point-to-point and mobile services in the same band is a recipe for intra-service harmful interference."^{13/} Private MAS spectrum should be reserved for the point-to-multi-point uses for which it was initially designed and intended. To do otherwise would impair the ability of the Nation's infrastructure industries to meet many of their safety, environmental and operational requirements.

Respectfully submitted,

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^{13/} Black, at p. 8.

CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of May, 1997, a true copy of the foregoing "Reply Comments" was deposited in the U. S. Mail, first-class postage pre-paid, addressed to each of the following:

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